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CHARLES ELMORE
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No. 39

In the Supreme Court of the United States

October Term, 1928.

J. R. WHEELER, *Petitioner*,

vs.

HOWARD GREENE, Receiver, *Respondent*.

On Certiorari to C. C. A. 7th Circuit.

MOTION OF BONDHOLDERS' PROTECTIVE COMMITTEE (FOR BONDS ISSUED OR ASSUMED BY KANSAS CITY JOINT STOCK LAND BANK OF KANSAS CITY, MISSOURI) FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF RESPONDENT'S PETITION FOR REHEARING, AND BRIEF OF AMICUS CURIAE.

JAMES A. REED,
MASSEY HOLMES,
Counsel for said Amicus Curiae.

SMITH-GRIEVES, LAW PRINTERS, KANSAS CITY, MO.

In the Supreme Court of the United States

October Term, 1928.

J. R. WHEELER, *Petitioner,*

vs.

HOWARD GREENE, Receiver, *Respondent.*

No. 711.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May it please the Court:

The undersigned, as counsel for Bondholders' Protective Committee for bonds issued or assumed by Kansas City Joint Stock Land Bank of Kansas City, Missouri, respectfully move this honorable court for leave to file the accompanying brief as *Amicus Curiae* in support of respondent's petition for rehearing.

Requested, counsel for respondent does, but counsel for petitioner does not, consent to the filing of this brief.

In these circumstances the brief is nevertheless submitted because of the conviction of these bondholders that this court has overlooked a most important *contractual right vested in bondholders by the terms of the Farm Loan Act.*

JAMES A. REED,
MASSEY HOLMES,
Counsel for said Bondholders' Committee.

In the Supreme Court of the United States

October Term, 1928.

J. R. WHEELER, *Petitioner,*

vs.

HOWARD GREENE, Receiver, *Respondent.*

No. 711.

BRIEF OF BONDHOLDERS' PROTECTIVE COMMITTEE FOR BONDS ISSUED OR ASSUMED BY KANSAS CITY JOINT STOCK LAND BANK OF KANSAS CITY, MISSOURI, AS AMICUS CURIAE IN SUPPORT OF RESPONDENT'S PETITION FOR REHEARING.

I.

STATEMENT.

The Kansas City bank is insolvent and is in receivership. There are outstanding approximately $44,376,500 farm loan bonds issued or assumed by that bank. The bondholders' committee at this date owns and holds up-

wards of $28,000,000 of these bonds. These bonds were purchased in the belief that in the event of insolvency, *there was a contractual obligation imposed on the Farm Loan Board to enforce the shareholders' liability for the benefit of the bonds.*

This point was not adverted to by this court in its opinion.

ARGUMENT.

Since the terms of the Farm Loan Act are necessarily provisions of farm loan bonds, those who by purchasing such bonds furnished the means of loans to farmers, became express obligees of the following promises by Congress (references are to Sections of U. S. C. A. Italics are ours):

> "That the issuing bank (821) 'is under Federal supervision';
>
> That such bonds (931) 'shall be deemed and held to be instrumentalities of the United States'—not merely written instruments of private business organizations;
>
> That the shareholders (812) 'shall be *held* individually responsible'—not merely that they shall *be* responsible, or legally liable, provided creditors care to enforce such liability;
>
> That the Board is (651) 'charged with the *execution* of this Act'; and
>
> That the Board shall have power (831 j) 'to exercise such incidental powers as shall be necessary or requisite *to fulfill its duties and carry out the purposes of this Act.*'"

Because these provisions are embodied in each bond as though therein set out verbatim, one who purchased bonds thereby furnished money to a governmental agency, became the holder of an instrumentality of the United States, by which instrumentality the United States, through its Congress, expressly promised such creditor that the shareholders *"shall be held responsible"* for that instrumentality—not, be it noted, a promise merely that the creditor himself might, if he chose, cause the share-

holders to be responsible, for the latter result would follow if the word "held" were omitted entirely.

The word "held" must be given some meaning, if possible.

The verb "to hold" is a verb of which the primary definitions are as follows: "To retain in any way so as to prevent falling, movement or *escape*" (Funk & Wagnalls, 1929); *"To keep from getting away"* (Murray's English Dictionary, 1897); "To *prevent* from falling or *escaping*" (Webster's New International, 1926).

"Responsible" means "liable to respond."

Applying these definitions, Section 812 clearly means: "Shareholders shall be *prevented from escaping* from their *liability to respond* for the debts of the bank."

Thus defined, this section promises *action* on the part of somebody, i. e., it is not a mere declaration of legal liability, for that would result if the word "held" were entirely omitted.

There is therefore an express assurance by Congress to the bondholder that *someone will prevent* the shareholder from escaping from his liability to respond, i. e., Section 812 imposes an *active duty* on *someone* so to prevent the escape of the shareholder. Congress has no *power* to impose such *active duty* on *creditors* of the bank, but of course has ample power to impose such duty on *an agency of its own creation*. That agency, the Farm Loan Board, is charged by Section 641 with the duty to *administer*, by Section 651 with the duty to *execute*, and by Section 831 (j) is given the *power* to do everything requisite to fulfill its *duties* and to carry out any *purpose* of the Act.

One express *purpose* of the Act is contained in Section 812, i. e., a purpose to *compel* the shareholder to respond, i. e., an active purpose to prevent the shareholder from escaping. The board is charged with the *duty* to *execute* this purpose (651), and by 831 (j) is given every power requisite to fulfill that duty and carry out that purpose.

These sections together form a part of the contract of every creditor, to-wit, that on becoming a creditor he has the assurance of Congress that the shareholder will be prevented (by someone other than the creditor) from escaping liability to respond for the debt to that creditor. This assurance by Congress can be fulfilled only by an agency under the control of Congress and that agency is the one charged with the *duty*, and given the *power*, to fulfill such assurance, i. e., the Board.

Therefore the power and duty to enforce the liability is not implied, but is *expressed* in these sections taken together.

It is submitted that this court can have considered neither the view of bondholders that these sections impose upon the Board the *active duty* to enforce for the bondholders the liability of the shareholders, nor the sapping of the security of these "instrumentalities of the United States" which must result if they are held not to carry an obligation of the Government, through its Farm Loan Board, to compel the shareholders to respond to the obligations of the bonds, but instead merely to confer upon the bondholder, if he can afford the time and the expense, a privilege to pursue the individual shareholders to their respective domiciles and there to enlist the aid of the courts in *holding* responsible shareholders whom Congress promised that the Farm Loan Board would *hold* responsible.

For these reasons it is earnestly requested that a rehearing be granted.

Respectfully submitted,

JAMES A. REED,
MASSEY HOLMES,
Counsel for Amicus Curiae.